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SUBJECT: KUWAIT: SPECIAL 301 REPORT 2010

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¶11. (SBU) SUMMARY: In a meeting on February 10th, Econcouns informed Ahmed Al-Haroun, the Minister of Commerce and Industry (MOCI), and Sheikha Rasha Naief Al-Sabah, the Director for IPR in the MOCI, about the 2010 301 Special Report review process. Due to the delays in passing a TRIPS-compliant Copyright Law, Post recommends that Kuwait remain on the Special 301 Watchlist. Protecting IPR remains a priority in Kuwait: inspection teams from the Ministries of Information (MOI), Commerce and Industry (MOCI) and Kuwaiti Customs continue to conduct regular raids and seizures. Kuwait maintains a strong spirit of enforcement, but the Kuwaiti Copyright Law and its TRIPS non-compliance hampers the government's enforcement capacity. END SUMMARY.

¶12. (SBU) Kuwait's 1999 Copyright Law was revised by the Minister of Commerce and Industry and is currently under review with the Ministry of Justice. Critics of the pending Copyright Law amendments say that the law is already obsolete because it does not address internet piracy protection. Post is encouraged by Kuwait's commitment to IPR enforcement and by an increased willingness to prosecute violators, but remains frustrated at the slow pace of movement on key legislation. MOCI, MOI and Customs have made IPR enforcement a high priority, but the delay in finalizing IPR legislation and forwarding it to the Parliament indicates that IPR protection is not a high priority for the GOK as a whole. In a recent meeting with Econoff, Tarek Al-Ajmi, the Assistant Undersecretary for the Ministry of Information, stated that the inter-ministerial National Committee for IPR, which was formed in 2005, has not met or done anything of substance since 2007.

¶13. (SBU) In September 2007, the GOK announced that copyright protection responsibility officially merged with the Ministry of Commerce and Industry (MOCI) and all IPR enforcement functions (other than Customs) had been consolidated into the MOCI, which previously held responsibility only for trademarks. The move has not been smooth or easy and several elements of enforcement have yet to make their final move into the Ministry of Commerce, including the office of the Director for IPR, Sheikha Rasha Naief Al-Sabah.

Optical Media Piracy

¶14. (SBU) In a recent phone conversation, Khaled Al-Abduljaleel Al-Jassem, the Assistant Manager for Kuwait's Arabian Anti-piracy Alliance (AAA) described to Econoff the pay TV decoder box phenomenon, which has emerged in Kuwait since 2007. For a fee of 40KD (about 160 USD), Kuwaitis can purchase a "DreamBox" receiver which provides access to multi-satellite channels, free of charge, for about six months. While Al-Jassem describes the "DreamBox" phenomenon as rampant in Kuwait, the International Intellectual Property Alliance (IIPA), claims that enforcement has resumed after a brief stoppage in 2009. Al-Jassem also asserted that Kuwait's optical media piracy rate is still around 90 percent, although the Ministry of Information disputes this figure. The Ministry of Information, however, does not compile its own statistics on optical

media piracy. Pirated optical media is imported into Kuwait in large quantities, but is also produced locally, as evidenced by several busts in which high-speed CD/DVD duplicating equipment was recovered. Post has noticed a significant reduction in the number of vendors selling pirated DVDs, software and video games on the streets or in shops. Due to the increase in the number of raids conducted by MOI and Customs, vendors have been forced to sell from residential locations like apartments and houses. Some shops continue to keep pirated DVDs, CDs and video games in backrooms and offer pirated material only upon request, or use advanced computer technology by acquiring pirated material from wireless LAN. Nonetheless, pirated material continues to be readily available in Kuwait.

Domestic and International IPR Agreements

¶5. (SBU) The United States and Kuwait entered into a Trade and Investment Framework Agreement (TIFA) in 2004, which established a formal dialogue to promote increased bilateral trade and investments. TIFA also emphasizes the importance of providing effective protection and enforcement of intellectual property rights and of membership adherence to intellectual property rights conventions. Kuwait has yet to join the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty (WPPT), as other GCC countries have done.

¶6. (SBU) On December 10, 2006, the GCC Supreme Council enacted the GCC Unified Trademark Law with the intent of homogenizing brand protection practices in the GCC states. The law seeks to replace local provisions with a single set of general directives governing assignment and cancellation, trademark registration, renewal and enforcement systems. Each country will retain and manage an independent register, and applications must be made separately in each country. Kuwait must draft and enact implementing regulations before the Trademark Law will become operative. These regulations are in the process of finalization.

TRIPS Compliance

¶7. (SBU) The Ministry of Information has drafted extensive amendments to the 1999 non-compliant Copyright Law, which it believes will bring the law into conformity with international standards. As part of the TIFA process, USG experts have reviewed the 1999 law and provided feedback for the Kuwaitis' consideration. Since February 2009, the draft Copyright Law has been under the jurisdiction of the IPR Department at the Ministry of Commerce and Industry. Sheikha Rasha Naief Al-Sabah, the Director of IPR and Ahmed Al-Haroun, the Minister of Commerce and Industry, informed Econcouns in a February 2010 meeting that the revised Copyright Law had passed the Ministry of Justice review and is currently with the Executive Cabinet's Legislative Committee and pending submission to Parliament.

¶8. (SBU) In 2004, the Ministry of Information submitted draft legislation to increase penalties for IPR violators. This law is still pending at the Cabinet Council and awaiting submission to the Parliament. The new law sets minimum penalties that include mandatory jail sentences. According to our interlocutors, all raids in 2009 resulted in cases being referred to prosecution. Penalties are still weak, however, and the judiciary has yet to show a consistent willingness to sentence violators to time in jail. Post continues to believe that weak penalties, which usually consist of a fine (up to \$1,735) and rarely include jail time, are a major contributing factor to the GoK's failure to deter vendors of pirated and counterfeit goods.

Training Opportunities

¶9. (SBU) In 2009, Post presented Kuwaiti officials with two invitations for IPR training opportunities with USPTO. Both of these invitations were declined due to language barriers, budget constraints and other bureaucratic issues. In October 2009, Kuwaiti Customs, in collaboration with the Ministry of Commerce and the Brand Owners Protection Group, conducted its first-ever training sessions for 150 customs inspectors on how to identify imitation products, effectively communicate intelligence updates, and how to profile counterfeit product shipments. American-based companies such as Philip Morris, Nike and Ford sent materials and representatives to talk about brand integrity and anti-counterfeiting techniques. In February 2010, Sheikha Rasha

Naief Al-Sabah participated in an IPR training session at the Kuwait Lawyers' Union, along with customs inspectors, lawyers and customs administrators.

Use and Procurement of Government Software

¶10. (SBU) In a December 2009 meeting, Jawad Al-Redha, Microsoft's regional office director told Econoff that software piracy in Kuwait is around 61 percent. The Ministry of Information does not have statistics on software piracy, however Post believes that private sector assessment in this case is accurate. Post's GOK interlocutors assure us that pirated software is not allowed in any government ministry or office. Ministry of Information, the Secretariat General of Supreme Council for Planning and Development (formerly the Ministry of Planning) and Ministry of Interior officials affirm that they use only licensed and authenticated software on government computers. However, Microsoft claims that the number of end-users exceeds the quantity of purchased and licensed software. MOI claims that its networks are monitored by an IT supervision center which does not permit any unlicensed software to be installed on its network systems. (Comment: MOI assertions in this regard are not highly credible. Emboffs have personally witnessed MoD laptop power-point presentations for high-level VIPs fail because the presentation was running pirated software. End comment.)

Enforcement

¶11. (SBU) In general, enforcement remains hampered by an unwillingness to prosecute Kuwaiti citizens who run piracy rings, with prosecution reserved for foreign nationals who work for Kuwaitis. In most cases, piracy fines are around 100 KD to 500 KD (350 USD to 1750 USD). Violators consider such minor penalties to be part of the cost of doing business. Businesses that are closed down for IPR violations often quickly reopen and return to selling the same products.

¶12. (SBU) Trademark infringement is a growing concern, particularly with the office at the Ministry of Commerce of Industry responsible for researching and registering trademark applications. Valid Kuwaiti registrations can be obtained for applications that clearly violate an existing trademark or trade dress, as long as no complaints are received over a 30-day period in which the mark is displayed in a local newspaper. Once a trademark is registered locally, it is difficult to rescind even after a complaint is made as the aggrieved party must go to court to resolve the issue. A secondary effect of this weak registration process is that Kuwaiti Customs is periodically forced to release products that clearly violate an existing trademark because the importer holds a valid Kuwaiti registration for the infringing mark.

Kuwaiti Customs

¶13. (SBU) The U.S. Customs advisory team, which has worked closely with Kuwaiti Customs since its creation in 2003-2004 and is physically located within Kuwaiti Customs offices, has developed a close and productive relationship with the IPR team at Customs, and much of Kuwaiti Customs' progress over the last few years can be directly attributed to this partnership. Kuwaiti Customs employs a complex tracking system to catalogue seizures and the disposition of each case; depending on the circumstance, dispositions can be a referral to the prosecutor's office and penalties imposed on the spot, including the confiscation and destruction of goods. Customs' seizures include a wide variety of pirated and counterfeit goods, including clothing, toys, watches, optical media, and automobile parts. For a first-time seizure, Customs allows the re-export of seized counterfeit goods, which violates international customs commitments, although all seized optical media are destroyed. If the same or similar goods are seized a second time, Customs destroys the confiscated products after 90 days, so long as the importer does not appeal the seizure to the courts. Some IPR holders have agreed to absorb the costs of destruction in order to avoid the goods being re-exported.

¶14. (SBU) Kuwaiti Customs continues to be the most aggressive and competent agency in impeding the movement of pirated and counterfeit

products. In 2009 Osama Al-Shami, the Assistant Director for the IPR Office in Kuwaiti Customs reported 394 seizures, valuing KD 615,738, with a 22% increase in comparison to 2008's 308 seizures. Such a decrease is attributed to the newly applied procedure, where importers approach Customs with sample products they intend to import, and ask for an assessment of the products' legitimacy before placing orders. Al-Shami stated that importers submitted 120 examples in 2009, with roughly 60% of the samples rejected. In 2009, Kuwait's Northern Ports were the primary point of entry for counterfeit products, valuing more than 400,000 KD; the primary products were electrical appliances, textiles and computer accessories.

Ministry of Commerce and Industry

¶15. (SBU) The Ministry of Commerce and Industry became more active in IPR protection after the signing of the Trade and Investment Framework Agreement in 2004. The Minister is the head of Kuwait's TIFA delegation and the Ministry is charged with heading the inter-ministerial National Committee for IPR which oversees and coordinates all enforcement efforts. However, as stated earlier, this Committee has been inactive since 2007. As a result of the TIFA process, the Ministry has made IPR enforcement a higher priority in the Ministry. MOCI blames parliamentary politics for lack of movement or slow movement on the Copyright Law amendments. Although the copyright office has moved to MOCI, bureaucratic details like budget, office space and personnel still remain to be worked out before the office can be fully functional with MOCI. Prior to the move, MOCI lacked the statutory authority to seize products that were openly sold as counterfeit. With added enforcement authority and jurisdiction over a broad range of IPR issues, the new MOCI IPR units should be more effective and efficient.

Ministry of Information

¶16. (SBU) According to MOI officials, the Ministry had plans to increase its enforcement staff to 250 in the next few years. The Ministry of Information now has 19 team leaders with the legal authorization to conduct search and seizures, bringing the Ministry's number of inspectors to 120. According to statistics provided by Abdulaziz Bu-Dastour, the recently named Supervisor in MOI's newly formed Inspection Department the Ministry seized 675,283 items in 2009. MOI shut down 46 stores and 427 cases were referred to prosecution.

¶17. (SBU) The copyright office and its inspectors have moved to the Ministry of Commerce and will work in conjunction with Commerce's trademark protection teams under a combined reporting hierarchy. Post was encouraged to learn that the copyright office has transferred largely intact, as the USG has invested considerable resources in training and developing its personnel over the years and plans to continue to do so in 2010.

Kuwaiti Municipality - Destruction of Seized Pirated Materials

¶18. (SBU) In October 2009, the Ministry of Information and the Kuwaiti Municipality undertook a massive destruction operation, transferring to the destruction site an estimated 16 million counterfeit items accumulated by the MOI in the last ten years. It took the Municipality more than two weeks to destroy the materials confiscated by customs inspectors.